

United States
Circuit Court of Appeals
For the Ninth Circuit.

RALPH WIEN,

Appellant,

vs.

ALASKAN AIRWAYS INC., a Corporation,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Territory of Alaska, Fourth Division.

FILED

APR - 9 1930

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

HARRY E. PRATT, Fairbanks, Alaska, and
LOUIS K. PRATT, Fairbanks, Alaska,
Attorneys for Defendant and Appellant.

JOHN A. CLARK, Fairbanks, Alaska, and
CHAS. E. TAYLOR, Fairbanks, Alaska,
Attorneys for Plaintiff and Appellee.

In the District Court for the Territory of Alaska,
Fourth Division.

No. 3274.

ALASKAN AIRWAYS, INC., a Corporation,
Plaintiff,

vs.

RALPH WIEN,

Defendant.

COMPLAINT.

The above-named plaintiff, Alaskan Airways, Inc., complains of the defendant Ralph Wien, and for cause of action against him alleges:

(1) That, at all times mentioned herein, the plaintiff was, and is now, a corporation duly organized and existing under the laws of the State of Delaware, having its principal office at Wilmington, in the county of New Castle, State of Delaware. That the principal object and business for which

said corporation was formed, and in which it is engaged, is the transportation in intrastate and interstate and foreign commerce, by aircraft, of passengers and freight of every nature and description.

(2) That plaintiff is now engaged in such business in Alaska, with an office and duly authorized agent at Fairbanks, Alaska; has paid its annual license fee last due to the Territory of Alaska; and has otherwise complied with all of the laws, rules, and regulations of the Territory of Alaska pertaining to foreign corporations.

(3) That the defendant Ralph Wien was at all of the times mentioned herein, and is now, a resident of Fairbanks in the Territory of Alaska.

(4) That, during the year 1929, and prior to the sixth day of August of said year, the said defendant was a stockholder and an active member of the Wien Alaska Airways, Inc., a corporation then and there existing under the laws of Alaska and engaged in the transportation of passengers and freight by aircraft in and about the Territory of Alaska. That said defendant was then and there employed by said corporation as mechanic and that he also took an active part in the general management of said company. [1*]

(5) That, on or about the sixth day of August, 1929, at Fairbanks, Alaska, this plaintiff purchased all of the property, assets, and business of the said Wien Alaska Airways, Inc., and all of the right, title,

*Page-number appearing at the foot of page of original certified Transcript of Record.

and interest of the said Ralph Wien therein, which said property consisted of hangars, airships, tools, furniture, spares, extra parts, equipment, and property of every nature and description, wheresoever situated together with the goodwill of the business of said corporation, saving and excepting only from said purchase the cash on hand and accounts due and payable to said company, the consideration for such purchase being the sum of Sixty-five Thousand Dollars.

(6) That the property so purchased, except the goodwill of said business, was of the value of Forty Thousand Dollars, the same being the cost landed price thereof at Fairbanks, and that the balance of said purchase price was paid in consideration of the goodwill of said company and of the individual stockholders thereof, including the said defendant Ralph Wien, and of the promises, covenants, and agreements of the said stockholders, including the said Ralph Wien, made individually and collectively, in writing, with this plaintiff, that the said parties, including the defendant Ralph Wien, would not, for a period of three years from said date, enter into competition in any way with this plaintiff, and would not enter into any business or become stockholders or have any interest in any other company or copartnership that would in any way compete with this plaintiff in such aviation business, and the said parties, including the said Ralph Wien, further promised and agreed as part consideration for such purchase price, that he would not, during such period of three years from the

sixth day of August, 1929, within the Territory of Alaska, accept any employment with any airplane company, corporation, association, or individual, who may be engaged commercially in any business that would in any way compete with the business of this plaintiff. [2]

(7) That the said parties, including the said Ralph Wien, then and there agreed in writing that, in the event of a violation of said agreement on his part, this plaintiff or its successor in interest would be entitled to an injunction to prevent the continuance of such violation, and that the party so violating said agreement should be liable for damages for the breach of said contract. That a copy of such agreement is attached hereto, marked Exhibit "A," and made a part of this complaint.

(8) That, notwithstanding the said agreements, covenants, and promises on the part of the said defendant, he, the said Ralph Wien, on or about the tenth day of January, 1930, entered into the employ of and associated himself with one Percy Hubbard and one A. Hines, copartners doing business under the name and style of the Service Motor Company, at Fairbanks, Alaska, and carrying on a general transportation of passengers and freight between points in Alaska, and that, ever since the said tenth day of January, 1930, the said Ralph Wien has been engaged as aviator and pilot of an airplane for said copartnership, and, in violation of his said promises and agreements, continues to carry on the business of commercial flying, in active competition

to the business of this plaintiff, to the damage of plaintiff.

(9) That, on or about the twentieth day of January, 1930, this plaintiff caused written notice of such violation of said agreement to be served upon the said Ralph Wien, and then and there notified the said defendant to immediately cease such violation and such competition, but that, notwithstanding said notice and demand, the said defendant Ralph Wien continues to act as aviator and flier for said Service Motor Company, and continues to violate the promises, covenants, and provisions of said agreement, to his damage in the sum of One Thousand Dollars.

(10) That unless the said defendant Ralph Wien is restrained and enjoined from continuing such employment, and from engaging [3] in the business of aviation either as flier, pilot, mechanic, manager, assistant, or in any other capacity whatsoever, either for himself or for any other person or persons whomsoever that will interfere with the business of this plaintiff, this plaintiff will suffer irreparable damage. That the defendant Ralph Wien is not financially able to respond to any judgment for damages which might be obtained against him and that this plaintiff has no other speedy or adequate remedy at law.

WHEREFORE plaintiff prays judgment against the said defendant as follows:

1st. That he be restrained and enjoined, for the period of three years from the sixth day of August, 1929, from engaging in any aviation busi-

ness, either as flier, pilot, mechanic, manager, assistant, or *any* any other capacity whatsoever, either for himself or for any other person or persons whomsoever, that will in any manner interfere with or compete with the business of this plaintiff.

2d. That plaintiff recover the costs and disbursements of this action.

3d. For such other and further relief in the premises as to the Court may seem just and equitable.

JOHN A. CLARK,
CHAS. E. TAYLOR,
Attorneys for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Chas. E. Taylor, being first duly sworn according to law, on his oath deposes and says:

I am one of the attorneys for the plaintiff in the above-entitled action, and make this verification for and on behalf of said plaintiff, for the following reasons, to wit: that the person upon whom service of summons might be had on said corporation is not now within the Territory of Alaska; that this action is founded upon a written instrument, the original whereof is in my possession [4] as one of the attorneys for the plaintiff; that I have read the foregoing complaint, know the contents thereof, and the same is true as I verily believe.

CHAS. E. TAYLOR.

Subscribed and sworn to before me on this the 31st day of January, A. D. 1930.

[Seal]

R. H. GEOGHEGAN,

Notary Public in and for the Territory of Alaska.

My commission expires 12 Octr., 1933. [5]

EXHIBIT "A."

This Bill of Sale, Made and executed on this, the 6th day of August, A. D. one thousand nine hundred twenty nine, by and between:

Wien Alaska Airways Incorporated, and Ralph Wien, Noel Wien, and G. R. Jackson, of Nome, Territory of Alaska, parties of the first part, and

Alaska Airways Incorporated, a corporation organized under the laws of the State of Delaware, party of the second part,

Witnesseth:

That the parties of the first part, for and in consideration of one dollar, and other good and valuable considerations, to them in hand paid, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer, unto the party of the second part, all and singular the assets of the parties of the first part, consisting in hangars, airships, tools, furniture, spares, extra parts, and equipment of every nature and description belonging to said Wien Alaska Airways Incorporated, wheresoever situate within the Territory of Alaska, as per inventory heretofore furnished by parties of the first part to party of the second part, together with all equipment, supplies, and extra parts ordered, acquired, or purchased

since said inventory was prepared, whether the same have been delivered or are in transit, save and except, however, that there are excluded from this transfer all cash on hand, accounts and bills receivable, due, owing, or unpaid to the party of the first part at this time, or that may be earned, or that may be due, owing, or unpaid to the party of the first part at midnight on the 5th day of August, A. D. one thousand nine hundred twenty nine, and all said cash on hand, outstanding accounts and bills receivable are retained by the party of the first part; provided further that party of the first part covenants and agrees to pay all outstanding indebtedness, claims, [6] and charges of every nature and description due and owing from Wien Alaska Airways Incorporated at midnight on the 5th day of August, A. D. one thousand nine hundred twenty nine, and party of the first part does hereby assign, transfer and set over unto the party of the second part all the goodwill of the business heretofore conducted by the party of the first part in the Territory of Alaska, together with all privileges and rights that arise therefrom or are appurtenant thereunto.

That it is the true intent hereof that the party of the first part assigns to the party of the second part all of its assets, other than cash on hand, accounts and bills receivable, including its goodwill, and in consideration thereof the parties of the first part agree, on behalf of themselves, their heirs, executors, administrators, successors in interest, and assigns, that neither said corporation nor any

of the stockholders thereof will, for a period of three years from the 6th day of August, A. D. one thousand nine hundred twenty-nine, enter into competition in any way with party of the second part herein; that the parties of the first part will not enter into any business that will conflict in any way with the party of the second part in the conduct of its business, and will not become stockholders or have any interest in any other company or copartnership, and will not enter into any agreement with any individual for the establishment, operation, conduct, or management of any business that will compete with the business of party of the second part, and will not, during said period, within the Territory of Alaska, accept employment with any airplane company, corporation, or association, and will not associate themselves with any individuals who may be engaged commercially in conducting any business that would in any way compete with the business of party of the second part, and will not assist in the organization of or be interested in any business within the Territory of Alaska, during a period of three years from the 6th day of August, A. D. one thousand [7] nine hundred twenty nine, that would compete in any way with the business conducted by the party of the second part, save and except that any of the individual stockholders of said corporation party of the first part herein, may enter the employ of the party of the second part in any capacity that is mutually agreeable, and it is further understood and agreed that, if any of the individual parties

of the first part do enter into business whereby they or any of them may find it advisable or advantageous to use an airplane in connection with said business, for their own individual use, they may do so, but neither they nor any of them shall use said airplane for commercial purposes or for the carrying of freight or passengers for hire.

That it is understood that the transfer by party of the first part is a transfer of all its assets and goodwill, both of itself as a corporation and of its stockholders, and its agreement not to enter into competition with the party of the second part or its successors in interest is a part of the consideration for the purchase by party of the second part of the assets and goodwill of the party of the first part.

That, in the event of a violation by parties of the first part of this agreement not to enter into competition with party of the second part, party of the second part or its successors in interest shall be entitled to an injunction to prevent the continuance of such violation and the parties so violating this agreement shall be liable for damages for breach of this contract.

That it is understood that party of the second part shall take possession of all said assets on the 6th day of August, A. D. one thousand nine hundred twenty-nine, and parties of the first part agree to deliver to party of the second part all said assets as the same exist on the 6th day of August, A. D. one thousand nine hundred twenty nine, and in as

good condition as they are on said last mentioned date. [8]

To have and to hold all said properties unto the said party of the second part and to its successors in interest and assigns forever.

That, in construing this agreement, it is understood that the party of the second part will be engaged in the aviation business, carrying passengers and freight for hire, and that the agreement on the part of the parties of the first part to refrain from entering into any business that would compete with party of the second part refers to said aviation business and business incidental thereto.

That the terms and conditions of this bill of sale and agreement shall be binding on the parties of the first part, their and each of their heirs, executors, administrators, successors in interest, and assigns.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals on the day and year hereinabove first written.

WIEN ALASKA AIRWAYS INCORPORATED. (Seal)

By NOEL WIEN, President.

By G. R. JACKSON, Secretary.

NOEL WIEN. (Seal)

RALPH WIEN. (Seal)

G. R. JACKSON. (Seal)

In the presence of:

E. STANGROOM.

RUTH WALSH.

United States of America,
Territory of Alaska,—ss.

This is to certify that, on this, the 6th day of August, A. D. one thousand nine hundred twenty-nine, before me, the undersigned, a notary public for the Territory of Alaska, residing therein, duly commissioned and sworn, personally appeared Noel Wien and G. R. Jackson, as president and secretary respectively of Wien Alaska Airways Incorporated, a corporation, by me known to be the persons who executed the foregoing instrument on behalf of said corporation and as individuals, and they acknowledged to me that they signed and sealed it in their said individual and representative capacities, as the free and voluntary act and deed of themselves [9] and of their said principal for the uses and purposes therein specified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on the day and year above in this certificate first written.

[Seal]

A. F. WRIGHT,

Notary Public in and for the Territory of Alaska.

My commission expires Oct. 14, 1929.

United States of America,
Territory of Alaska,—ss.

This is to certify that, on this the 6th day of August, A. D. one thousand nine hundred twenty-nine, before me, the undersigned, a notary public for the Territory of Alaska, residing therein, duly commissioned and sworn, personally came Ralph

Wien to me known to be the individual mentioned in and who executed the foregoing instrument and he acknowledged to me that he signed it as his free and coluntary act and deed for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year above in this certificate first written.

[Seal] A. F. WRIGHT,
Notary Public in and for the Territory of Alaska.

My commission expires Oct. 14, 1929.

[Endorsed]: Filed Jan. 31, 1930. [10]

[Title of Court and Cause.]

MOTION FOR ORDER ALLOWING TEM-
PORARY INJUNCTION.

Comes now the above-named plaintiff, by and through its attorneys, Messrs. John A. Clark and Charles E. Taylor, and moves the court for an order requiring the above-named defendant Ralph Wien to be and appear before this court, at a date to be set by the court, then and there to show cause, if any he has, why a temporary restraining order should not be issued to restrain the said defendant Ralph Wien, during the pendency of this action, from engaging in any business, occupation or employment as aviator, pilot of airplanes or other aircraft or in any other manner engaging in the airways transportation business for hire, either for

himself or for or in behalf of any other person or persons whomsoever.

Dated, Fairbanks, Alaska, February 4, 1930.

JOHN A. CLARK,
CHAS. E. TAYLOR,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 4, 1930. [11]

[Title of Court and Cause.]

ORDER TO SHOW CAUSE.

Upon reading the complaint on file in the above-entitled action, together with the affidavit of Charles L. Thompson, and the motion of John A. Clark and Charles E. Taylor, attorneys for the plaintiff, for an order requiring the above-named defendant Ralph Wien to show cause, if any he has, why he should not be enjoined and restrained, during the pendency of this action and until the termination thereof, from in any way acting as pilot or otherwise operating any airplane or other aircraft for hire, either for himself or for or in behalf of any other person or persons whomsoever,—

Now, therefore, the Court being fully advised, **IT IS ORDERED AND ADJUDGED**, that the said defendant, Ralph Wien, be and appear before this court on Saturday the 8th day of Febru-

two

ary, 1930, at the hour of ~~ten~~ o'clock of said day, or

as soon thereafter as counsel can be heard, then and there to show cause, if any he has, why a temporary restraining order should not be issued by this court, enjoining and restraining the said defendant Ralph Wien from acting as pilot or aviator, or in any manner operating airplanes or other aircraft for hire, either for himself or for any other person or persons whomsoever or to do anything whatsoever that will in any manner conflict with the business of the plaintiff herein, during the pendency of this action.

Dated, Fairbanks, Alaska, February 4, 1930.

CECIL H. CLEGG,
District Judge.

Entered in Court Journal No. 17, page 637.

[Endorsed]: Filed Feb. 4, 1930. [12]

[Title of Court and Cause.]

MARSHAL'S RETURN ON CERTIFIED
COPY OF ORDER TO SHOW CAUSE
WITH MOTION AND AFFIDAVIT.

I, Lynn Smith, United States Marshal for the Territory of Alaska, Fourth Division, do hereby certify and return that I received a certified copy of motion with affidavit and order to show cause in the above-entitled case at Fairbanks, Alaska, on the 4th day of February, 1930, and that thereafter on the same day I delivered the said certified copy of motion with affidavit and order to show cause to

the defendant Ralph Wien, personally, at Fairbanks, Alaska.

Dated at Fairbanks, Alaska, this 5th day of February, 1930.

LYNN SMITH,

U. S. Marshal.

By PAT O'CONNOR,

Deputy.

[Endorsed]: Filed Feb. 5, 1930. [13]

[Title of Cause.]

ORDER RESETTING HEARING ON PLAINTIFF'S ORDER TO SHOW CAUSE.

Now on this day, on motion of Harry E. Pratt, Esq., of counsel for defendant, Chas. E. Taylor, Esq., of counsel for plaintiff, being present and consenting thereto,—

IT IS ORDERED that the hearing on plaintiff's order to show cause be, and is hereby reset for 2:00 o'clock P. M. of Monday, February 10, 1930.

Entered in Court Journal No. 17, page 648.

[Endorsed]: Feb. 7, 1930. [14]

[Title of Cause.]

ORDER RESETTING HEARING ON PLAINTIFF'S ORDER TO SHOW CAUSE.

Now on this day, on motion of Chas. E. Taylor, Esq., of counsel for plaintiff, Louis K. Pratt, Esq., of counsel for defendant, being present and consenting thereto,—

IT IS ORDERED that the hearing on plaintiff's order to show cause be, and is hereby reset for 3:00 o'clock P. M. of this 10th day of February, 1930.

Entered in Court Journal No. 17, page 658.

[Endorsed]: Feb. 10, 1930. [15]

[Title of Cause.]

HEARING ON PLAINTIFF'S ORDER TO SHOW CAUSE.

Now on this day this cause came on regularly for hearing on plaintiff's order to show cause why temporary injunction should not be issued restraining defendant, the plaintiff appearing by and through Chas. E. Taylor, Esq., the defendant being present in person and with his counsel Louis K. Pratt and Harry E. Pratt, Esq.

Argument to the Court was had by Chas. E. Taylor, Esq., for and in behalf of the plaintiff, and by Harry E. Pratt, Esq., for and in behalf of the

defendant, and at 5:30 P. M. the Court tentatively continued the hearing until 10:00 o'clock A. M. of Tuesday, February 11, 1930.

Entered in Court Journal No. 17, page 658.

[Endorsed]: Feb. 10, 1930. [16]

[Title of Cause.]

ORDER CONTINUING HEARING.

Now at this time on the Court's own motion, IT IS ORDERED that the hearing tentatively set for 10:00 o'clock A. M. of this 11th day of February, 1930, be and is hereby continued until 7:30 P. M. of said day.

Entered in Court Journal No. 17, page 664.

[Endorsed]: Feb. 11, 1930. [17]

[Title of Cause.]

HEARING ON PLAINTIFF'S ORDER TO SHOW CAUSE (CONTINUED).

Now on this day this cause came on regularly for hearing on plaintiff's order to show cause why temporary injunction should not be issued restraining defendant, the plaintiff appearing by and through Chas. E. Taylor, Esq., the defendant being present in person and with his counsel Louis K. Pratt, Esq., and Harry E. Pratt, Esq.

Argument to the Court was had by respective counsel, whereupon the Court stated the matter would be taken under advisement and decision rendered at a subsequent date.

Entered in Court Journal No. 17, page 664.

[Endorsed]: Feb. 11, 1930. [18]

[Title of Cause.]

ORDER GRANTING PLAINTIFF'S MOTION
FOR TEMPORARY INJUNCTION.

And now came Chas. E. Taylor, Esq., counsel for plaintiff, came Louis K. Pratt, Esq., and Harry E. Pratt, Esq., counsel for defendant, and the Court having heretofore and on the 11th day of February, 1930, heard the arguments of counsel on plaintiff's motion for a temporary injunction and taken the matter under advisement and now being fully and duly advised in the premises,—

IT IS ORDERED that the plaintiff's motion for a temporary injunction be and is hereby granted and the bond fixed in the sum of Twelve Hundred Dollars (\$1,200.00).

Entered in Court Journal No. 17, page 689.

[Endorsed]: Feb. 24, 1930. [19]

[Title of Court and Cause.]

TEMPORARY INJUNCTION.

This cause having been brought on regularly for hearing on the 12th and 13th days of February, 1930, upon the motion of the above-named plaintiff for an order of this Court enjoining and restraining the defendant Ralph Wien, during the pendency of this action, from engaging in the occupation of aviation or of any business pertaining thereto which would in any way compete or interfere with the business of the plaintiff, plaintiff appearing by its attorneys Messrs. John A. Clark and Charles E. Taylor, and the defendant appearing by his attorneys, Messrs. Harry E. Pratt and Louis K. Pratt.

And the Court having read the complaint and affidavit filed by the plaintiff and the counter-affidavit filed by the defendant, and having heard and considered the arguments of respective counsel, and being fully advised in the premises,—

IT IS ORDERED AND ADJUDGED AND DECREED that the defendant Ralph Wien be enjoined and restrained during the pendency of this action and until the final determination thereof from entering into competition in any way with the plaintiff in the conduct of its airplane business in the Second, Third, and Fourth Judicial Divisions of Alaska, and from entering into any business that will conflict in any way with the plaintiff in the conduct of its airplane business in said Divisions of Alaska, and from becoming interested in any

corporation or [20] copartnership engaged in said divisions in the airplane business, and from accepting employment with any airplane company, corporation or association, except the plaintiff company, as pilot, mechanic or manager in the aforesaid Divisions of Alaska, which said restraints and injunctions against the defendant shall continue until the final determination of this action.

IT IS FURTHER ORDERED AND ADJUDGED that this order shall become effective and operative upon the filing, by the plaintiff, of the statutory undertaking in the sum of Twelve Hundred Dollars (\$1,200.00), to be approved by this Court.

Dated at Fairbanks, Alaska, this 25th day of February, 1930.

CECIL H. CLEGG,
District Judge.

Entered in Court Journal No. 17, page 692.

[Endorsed]: Filed Feb. 25, 1930. [21]

[Title of Court and Cause.]

UNDERTAKING FOR TEMPORARY IN-
JUNCTION.

WHEREAS, in the above-entitled action, the above-named plaintiff applied for a temporary injunction to restrain the defendant Ralph Wien from entering into any business or employment with any person or persons that will in any way

conflict or interfere with the plaintiff in the conduct of its airplane business in the Territory of Alaska; and

WHEREAS, after hearing such application, the above court, on the 24th day of February, 1930, granted a temporary injunction in this action, enjoining and restraining the said defendant Ralph Wien from entering into competition with the plaintiff in the conduct of its airplane business in the Second, Third and Fourth Judicial Divisions of Alaska, and from entering into any business that will conflict in any way with the conduct of such business of plaintiff, and from becoming interested in any company or partnership engaged in the said divisions in the airplane business, and from accepting any employment with any airplane company, corporation or association, except the plaintiff company, as pilot, mechanic or manager in said Divisions of Alaska, which said temporary injunction was to take effect and become operative upon the filing by plaintiff of an undertaking as provided by statute, in the sum of Twelve Hundred Dollars (\$1200.00) to be approved by the Court, and to continue and remain in operation until the final determination of this action,— [22]

Now, therefore, we, the Alaskan Airways, Inc., a corporation, as principal, and the National Surety Company, a corporation as surety, in consideration of the premises, and of the issuing of said temporary injunction, do hereby jointly and severally undertake and promise that they will pay all costs and disbursements that may be decreed to the defend-

ant, Ralph Wien, and such damage that he may sustain by reason of said temporary injunction, if the same be wrongful or without sufficient cause, not exceeding said sum of Twelve Hundred Dollars (\$1200.00).

Dated, Fairbanks, Alaska, February 26th, 1930.

ALASKAN AIRWAYS INC.

By ARTHUR W. JOHNSON,

Manager.

NATIONAL SURETY COMPANY.

By CHAS. E. TAYLOR, (Seal)

Attorney-in-fact.

United States of America,
Territory of Alaska,
Fourth Judicial Division,—ss.

Chas. E. Taylor, being first duly sworn, on oath, says: I am the duly authorized agent of the National Surety Company *Company*, a corporation, the surety on the foregoing bond. That to the best of my knowledge and belief the said company has complied with the provisions of Chapter 52, Session Laws of Alaska, 1915, and the laws of the United States and of the Territory of Alaska, with reference to surety companies and corporations and that the said Surety Company is fully authorized to do business within the Territory of Alaska, and is worth more than the sum of Twelve Hundred Dollars over and above all its just debts and liabilities in property not exempt from execution.

CHAS. E. TAYLOR.

Subscribed and sworn to before me this 26th day of February, A. D. 1930.

[Seal]

J. G. RIVERS,

Notary Public in and for Alaska.

My commission expires 2/18/34.

The foregoing bond approved this Feb. 26th, 1930.

CECIL H. CLEGG,

District Judge.

Filed Feb. 26, 1930. [23]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 12th day of February, 1930, this cause came on to be heard by the Court on plaintiff's motion for a rule to show cause and on a rule to show cause on the part of the defendant why a temporary injunction should not be issued against him in this cause. The plaintiff appeared by Charles E. Taylor, one of its attorneys of record, and the defendant in person and by Harry E. Pratt and Louis K. Pratt, his attorneys.

On behalf of the plaintiff the said Charles E. Taylor, its attorney, read the complaint, motion and rule to show cause and the supporting affidavit of Charles L. Thompson and also the affidavit of defendant, Ralph Wien, entitled "Resistance to Motion to Show Cause," and in that connection it was stipulated between the attorneys for the plain-

tiff and the defendant that the portion of the affidavit of Ralph Wien on file in this cause and entitled "Resistance to Motion to Show Cause" which set forth in effect that the contract forming the basis for the cause of action [24] in this cause was entered into by the plaintiff for the purpose and with the effect of creating a monopoly of the airplane business in Alaska, and especially in the Interior of Alaska, should be deemed denied by plaintiff to the same effect as if such denial of such portion had been made in writing by proper affidavit. At the close of the showing on behalf of the plaintiff the defendant submitted the affidavit of Ralph Wien, the defendant, of date February 10th, 1930, entitled "Resistance to Motion to Show Cause." The hearing on the motion was concluded on February 13, 1930, and all of the evidence seen and heard by the Court was the said complaint, the affidavit of Charles L. Thompson, the said affidavit of defendant, Ralph Wien, and the denial by plaintiff of the monopoly statements made by the said Ralph Wien in his affidavit.

The affidavit of Charles L. Thompson (omitting caption and title) was as follows:

AFFIDAVIT OF CHARLES L. THOMPSON.

"CHARLES L. THOMPSON, being first duly sworn upon his oath, deposes and says:

I am the duly authorized agent of the Alaskan Airways Inc., a corporation, duly organized and existing under and by virtue of the laws of the

State of Delaware, engaged in and carrying on a general airways and aerial transportation business in Alaska, and that I am the manager of said Company at Fairbanks, Alaska, and make this affidavit for and in its behalf.

That on or about the 6th day of August, 1929, at Fairbanks, Alaska, the said Alaskan Airways Inc., purchased all of the right, title and interest of the above-named defendant, Ralph Wien, in and to the Wien Alaska Airways Company, a corporation then and there existing and carrying on a general airways transportation business in Alaska, such [25] purchase including all of the property and goodwill of the said corporation and of its stockholders, including the said defendant Ralph Wien who was then and there a stockholder and employee of said company.

That as part of the consideration for said purchase price, the said Wien corporation, and all of its stockholders, including the said Ralph Wien, covenanted, promised and agreed, individually and collectively, that, for a period of three years, commencing on said 6th day of August, 1929, they—including the said Ralph Wien would not engage in any business or accept any employment with any firm, person or corporation that would in any way interfere with or compete with the business of the Alaskan Airways Inc., to wit: that of airways transportation of freight or passengers for hire.

That notwithstanding such covenants, agreements and promises of the said Ralph Wien, he, the said Ralph Wien, on or about the 10th day of Janu-

ary, 1930, accepted employment and associated himself with one Percy Hubbard and one Arthur Hines, copartners engaged in the business of motor and airway transportation at Fairbanks, Alaska, and engaged in carrying passengers and freight by airplane from Fairbanks to other points in Alaska, for hire, which said business is in direct competition and interference with the business of said Alaskan Airways Company.

That immediately upon the acceptance of the said employment by the said Ralph Wien, he, the said Wien was notified by the said Alaskan Airways Inc., of his violation of his said promises and covenants, but the said Ralph Wien utterly disregarded said notice and continued in said employment and still continues therein, and will, unless enjoined [26] and restrained by this Court, continue to act as aviator and pilot and operate airplanes between points in the Territory of Alaska, for the said Hubbard and Hines, in competition with the said Alaskan Airways, Inc., and in violation of said agreements and covenants, and the said Alaskan Airways, Inc., will be irreparably damaged by reason thereof.

That on or about the first day of February, 1930, the above-entitled action was instituted in the above Court and summons and a copy of the complaint duly served upon the said Ralph Wien, to which complaint reference is hereby made for more particulars of the said purchase and of the promises and agreements of the said Ralph Wien in the premises.

That the said Ralph Wien is not financially able to respond in damages that may be adjudged against him by this Court by reason of his said actions, and that the plaintiff herein has no plain, speedy or adequate remedy at law, and that until the final hearing of this cause the said defendant Ralph Wien should be enjoined and restrained from continuing to in any manner operate or pilot any planes or other aircraft for hire, either for himself or for any other person or persons whomsoever.”

The affidavit of defendant Ralph Wien (omitting caption) was as follows:

AFFIDAVIT OF RALPH WIEN.

RESISTANCE TO MOTION TO SHOW CAUSE.

United States of America,
Territory of Alaska,—ss. [27]

Ralph Wien, being first duly sworn on oath says: I am the defendant above named; the above-named plaintiff, as shown by its articles of incorporation on file in the office of the Clerk of this court, was organized under the laws of the State of Delaware in the month of June, 1929; that one of the objects of its organization was to transport passengers and freight for hire as a common carrier from one point to another within the Territory of Alaska, and to and from points within the Territory of Alaska and the States and foreign countries; that the office and principal place of business of said

plaintiff within the Territory of Alaska, is in the Town of Fairbanks, Alaska, Division aforesaid; that said plaintiff filed a copy of its charter or articles of incorporation, its designation of an agent upon whom service of process in Alaska might be made, and its financial statement in the office of the Clerk of the District Court for the aforesaid Division on the 12th day of September, 1929, and not before, and it filed a copy of its charter or articles of incorporation, financial statement and designation of agent in the office of the Auditor of the Territory of Alaska on the 22d day of October, 1929, and not before; that said plaintiff paid the corporation tax and other fees required by law of foreign corporations doing business within Alaska on the 22d day of October, 1929, and not before.

That upon the 1st day of August, 1929, said plaintiff purchased all of the property, goodwill and business of the Bennett-Rodebaugh Airplane Company, a corporation doing a general business as common carrier through the air in the transportation of passengers and freight within the Territory of Alaska and between Alaska and points in Canada and Siberia, and between the 1st day of August and the 6th day of August, 1929, and at all times thereafter the said plaintiff was [28] engaged as a common carrier in doing an airplane business transporting passengers and freight by air from one point to another within the Territory of Alaska and said plaintiff continued at all times after the 1st day of August, 1929, to do a general airplane business transporting pas-

sengers and freight in Territorial and foreign commerce; that at all times after the 1st day of August, 1929, the said plaintiff held itself out to the general public as being a common carrier in the business of transporting passengers and freight by air from point to point in Alaska and to and from points in foreign countries and Alaska and during said period, from August 1st to August 6th, 1929, did in fact as a common carrier transport passengers and freight for hire from point to point within the Territory of Alaska, and did in fact do a general transportation business by airplane within the Territory of Alaska, between the 1st and 6th days of August, 1929, and at all times thereafter.

That upon the 6th day of August, 1929, the Wien Alaska Airways Incorporated was a corporation organized under the laws of the Territory of Alaska and engaged as a common carrier in carrying passengers and freight for hire from point to point within the Territory of Alaska and from points in Alaska to and from Siberia and Canada.

That at the time the contract set forth in plaintiff's complaint was entered into the said plaintiff had already purchased the property and business of the Bennett-Rodebaugh Airplane Company, and had already arranged to purchase the property and business of the Anchorage Air Transport Incorporated, a corporation, a common carrier engaged in transporting by airplane passengers and freight within the Territory of Alaska, and especially within the Third, Fourth and Second Divisions of Alaska; that the only transportation [29] by air

within the Third, Fourth and Second Division of the Territory of Alaska, upon the 5th day of August, 1929, and thereabouts was that furnished by the aforesaid Anchorage Air Transport Incorporated, Alaska Airways Incorporated and Wien Alaska Airways Incorporated.

That the said plaintiff purchased the said Bennett-Rodebaugh Airplane Company and entered into the contract set forth in plaintiff's complaint and purchased the business, goodwill and property of the said Anchorage Air Transport Incorporated during the month of August, 1929, pursuant to a general plan to purchase all of said companies and to thereby eliminate all competition and create a monopoly in itself, and in purchasing the property, business and goodwill of said Bennett-Rodebaugh Airplane Company and the Anchorage Air Transport Incorporated entered into contracts with them and their stockholders to the same effect and purpose as that entered into with Wien Alaska Airways Incorporated which is set forth in plaintiff's complaint, in fact the contracts entered into between the plaintiff and the aforesaid Bennett-Rodebaugh Airplane Company and Anchorage Air Transport Incorporated were identical with the contract set forth in plaintiff's complaint with the exception of the necessary change of names and the dates.

That at the time of the execution of said contract of August 6th, 1929, Exhibit 'A' of plaintiff's complaint, all of the stock of the Wien Alaska Airways Incorporated was owned and held by the sign-

ers of said agreement, to wit, Noel Wien, G. R. Jackson and affiant, and the effect of said contract, Exhibit 'A,' was to transfer all of said stock to plaintiff, and affiant and his co-owners aforesaid immediately after executing said contract of August 6th, [30] 1929, met and dissolved said Wien Alaska Airways Incorporated, according to the laws of Alaska relating thereto, to wit, Section 23, Chapter 73 Session Laws of Alaska, 1923.

That this affiant is financially responsible and able to respond to any judgment for damages that might be obtained against him; that said contract of August 6th, 1929, Plaintiff's Exhibit 'A' in its complaint, was made in Alaska, with residents of the Territory of Alaska and the same is void.

RALPH WIEN.

Subscribed and sworn to before me this 10th day of February, 1930.

HARRY E. PRATT,

Notary Public in and for the Territory of Alaska.

My commission expires Aug. 9, 1930.

The law and the facts of the case were argued by the attorneys for the parties respectively, and at the conclusion thereof on the 13th day of February, 1930, the Court took the case under advisement, and afterwards and on the 24th day of February, 1930, sustained the said motion, granted said temporary injunction and at that time filed a written "Memorandum Opinion on Motion for Temporary Injunction" in words and figures as follows:

In the District Court for the Territory of Alaska,
Fourth Judicial Division.

No. 3274.

ALASKAN AIRWAYS INC., a Corporation,
Plaintiff,

vs.

RALPH WIEN,

Defendant.

MEMORANDUM OPINION ON MOTION FOR
TEMPORARY INJUNCTION.

Suit in equity to enforce the provisions of a contract [31] entered into between plaintiff and defendant and others in which permanent injunction is main relief sought to restrain acts of defendant in violation of covenants to the effect that he would refrain from engaging in competitive business for the period of three years in Alaska. Order to show cause was issued and on return day hearing was had.

No fair understanding can be had of the novel controversy presented on the hearing of this motion without setting out the complaint and supporting affidavit in behalf of plaintiff and the affidavit of defendant Wien entitled "Resistance to Motion to Show Cause."

The complaint is as follows:

(The complaint copied in said opinion is omitted because a part of the record proper.)

Plaintiff's supporting affidavit is by its local manager, Charles L. Thompson, as follows:

(The affidavit of Chas. L. Thompson copied into the opinion is omitted because already a part of this bill of exceptions.)

Defendant's showing in opposition to granting the motion is made by the affidavit of the defendant Ralph Wien in the document entitled "Resistance to Motion to Show Cause" as follows:

(The affidavit of Ralph Wien is omitted as a part of the opinion for the reason that it is already incorporated in this bill of exceptions.)

It was stipulated on the hearing by the attorneys for the respective parties that that portion of the affidavit of Wien referring to the existence of an alleged monopoly might be considered as denied by the plaintiff without the filing of a formal denial. [32]

These papers constitute everything filed before the Court on this hearing except the briefs of counsel. There was no oral testimony.

JOHN A. CLARK and CHARLES E. TAYLOR,
of Fairbanks, Alaska, Attorneys for Plaintiff.
HARRY E. PRATT and LOUIS K. PRATT, of
Fairbanks, Alaska, Attorneys for Defendant.

CLEGG, J.—It will be observed from the foregoing that no formal answer has been filed by the defendant; that the complaint and supporting affidavit by Thompson is wholly undenied and uncontradicted by defendant's affidavit entitled "Resistance to Motion to Show Cause"; that the contract sued

upon is not attacked as to the competency of parties, execution, consideration, terms and language, nor assailed for fraud, coercion, mistake, or undue influence, or that the subject of the contract is not lawful; that the attempted defense in defendant's affidavit entitled "Resistance to Motion to Show Cause" might be set up as a defense to the main action and become one of the ultimate issues in the case on trial and that it falls far short in its allegations of fact to challenge the attention of a court of equity in the face of the rights and equities existing on behalf of the plaintiff from the allegations of the complaint and supporting affidavit. The entire resistance attempts to set up new and collateral facts in no way suggested or inspired by plaintiff's showing which undeniably entitles plaintiff to the relief now sought.

It is the contention of the defendant in his showing, in substance, as follows:

That on the 6th day of August, 1929, when the contract [33] sued upon was executed, the plaintiff, being a foreign corporation, did not file a copy of its charter, articles of incorporation, financial statement and designation of an agent upon whom service of process in Alaska might be made in the office of the Clerk of the District Court of the Fourth Judicial Division of Alaska until the 12th day of September, 1929.

That the office of said plaintiff and the principal place of its business in Alaska was the town of Fairbanks, Alaska.

That it did not file its charter or articles of incorporation, financial statement and designation of agent in the office of the auditor of the Territory until the 22d day of October, 1929.

That it did not pay the statutory corporation tax and other fees required by the laws of the Territory until the 22d day of October, 1929; and

That between the 1st day of August, 1929, and the 6th day of August, 1929,—

“ * * * the plaintiff was engaged as a common carrier in doing an airplane business transporting passengers and freight by air from one point to another within the Territory of Alaska and said plaintiff continued at all times after the 1st day of August, 1929, to do a general airplane business transporting passengers and freight in Territorial and foreign commerce; that at all times after the 1st day of August, 1929, the said plaintiff held itself out to the general public as being a common carrier in the business of transporting passengers and freight by air from point to point in Alaska and to and from points in foreign countries and Alaska and during said period, from August 1st to August 6th, 1929, did in fact as a common carrier [34] transport passengers and freight for hire from point to point within the Territory of Alaska, and did in fact do a general transportation business by airplanes within the Territory of Alaska, between the 1st and 6th days of August, 1929, and at all times thereafter.”

These allegations must stand the test to which oral testimony would be subjected, and, examining them with reference to the filing of documents required by the law, the Court accepts judicially as a fact that the plaintiff did not file a copy of its charter, articles of incorporation, financial statement, or its designation of an agent on whom process might be served in the office of the Clerk of the District Court of the Fourth Division of Alaska until the 12th day of September, 1929; but the Court cannot accept, even if uncontradicted, the statement that the plaintiff did not file a copy of its charter, or articles of incorporation, or financial statements, or designation of agent in the office of the Auditor of the Territory of Alaska until the 22d day of October, 1929, nor the statement that plaintiff paid the corporation tax and other fees required by law of foreign corporations doing business in Alaska only upon the 22d day of October, 1929. This is not even secondary, but, at most, hearsay testimony.

Section 1872 of the Compiled Laws of Alaska provides as follows:

“Sec. 1872. A judicial, legislative, or executive record of said District, or of any State or Territory of the United States, or of any foreign country, or of any political subdivision of either, may be proved by the production of the original, or by a copy thereof, certified by the clerk or other person having the legal custody thereof, with the seal of the court or the official seal of such [35] person affixed thereto, if it or he have a seal, or otherwise authenticated as

required by sections nine hundred and five, nine hundred and six, and nine hundred and seven of the Revised Statutes of the United States.”

Without quoting them, Sections 654, 655, 657, and 660 as amended by Chapter 32 of the Session Laws of Alaska, 1923, contain a statement of the law governing foreign corporations doing business in Alaska, and the latter section as amended prescribed the penalty for noncompliance therewith, saying, in effect, that all contracts made by a noncomplying corporation or company with residents of the Territory which are made in the Territory shall be void as to the corporation or company, and no Court of the Territory shall enforce the same in favor of the corporation or company. It is contended that the plaintiff company failed in complying with the prescribed laws in this regard, and that, therefore, the contract sued upon, which it is admitted was made in the Territory with a resident of the Territory, is void.

On this preliminary hearing, even if the best evidence were presented showing, or tending to show, that the contract sued upon was void under these sections and the facts, the Court will not now enter into a consideration or determination of this question which may become one of the final issues in the case, especially where the same is not tendered to the Court by a formal answer verified as required by law. The Court will be content to preserve the status of the parties as fixed by the terms of the contract pending a final hearing on the merits.

The rules by which the Court and parties will now be governed may be briefly stated:

“As a general rule, where an injury committed by one [36] against another is continuous or is being constantly repeated, so that complainant’s remedy at law requires the bringing of successive actions, that remedy is inadequate and the injury will be prevented by injunction.” 32 C. J., sec. 36, p. 56.

“An injunction *pendente lite* should not usurp the place of a final decree, neither should it reach out any further than is absolutely necessary to protect the rights and property of the petitioner from injuries which are not only irreparable, but which must be expected before the suit can be heard on its merits. Only those issues will be determined which are necessary factors in granting or denying a temporary restraining order. It is not necessary that the complainant’s rights be clearly established, or that the Court find complainant is entitled to prevail on the final hearing. It is sufficient if it appears that there is a real and substantial question between the parties, proper to be investigated in a court of equity, and in order to prevent *irremedial* injury to the complainant, before his claims can be investigated, it is necessary to prohibit any change in the conditions and relations of the property and of the parties during the litigation.”

The latter statement is by District Judge Farrington in the case of Goldfield Consol. Mines Co.

vs. Goldfield Miners' Union No. 220 et al., 159 Fed. 511, 512, citing 22 Cyc. 822; 6 Pomeroy's Eq. Juris. 621; Harriman vs. Northern Securities Co. (C. C.) 132 Fed. 464, 485.

Spelling on Injunctions (2d ed.), Vol. 1, page 13, states the rule as follows:

“It is a rule of courts in issuing a temporary injunction, that they will in no manner anticipate the ultimate result of the questions of right involved. It is sufficient, for the purpose of granting the writ, that a [37] case has been made out warranting interference for the preservation of the property or rights in issue *in statu quo*, until final hearing upon the merits. It is neither usual nor necessary, at this state of the proceedings, to express or even to have the means of forming an opinion on the merits of the principal matter at issue; nor, generally, does it defeat the rights acquired under an interlocutory injunction that complainant should not prevail upon the trial of the merits, or should fail to present such a case as will entitle him to a perpetual injunction upon the final hearing. He may be entitled to temporary relief, although his right to the relief prayed may ultimately fail.”

Further, at Section 487, page 412, this author again says:

“One of the most frequent cases calling for preventive relief is where parties seek to restrain the violation of provisions in contracts

for not engaging in a particular kind of business, or not setting up in business * * * . Such provisions are designated by the general term of negative stipulations, and will be enforced by injunction when reasonable and not in illegal restraint of trade.”

High on Injunctions (2d ed.), Vol. 1, sec. 8, page 8, states the rule as follows:

“Where, however, the parties are at issue upon a question of legal right and it is necessary to preserve their rights *in statu quo* until the determination of the controversy, an interlocutory injunction may properly be allowed. In such cases courts of equity do not assume jurisdiction to dispose of the legal rights in controversy, but confine themselves to protecting those rights as they then are, pending an adjudication upon the legal questions involved.”

[38]

Section 5, page 5, of the same work reads:

“It is to be constantly borne in mind that in granting temporary relief by interlocutory injunction, courts of equity in no manner anticipate the ultimate determination of the questions of right involved. They merely recognize that a sufficient case has been made out to warrant the preservation of the property or rights in issue *in statu quo* until a hearing upon the merits, without expressing, and indeed without having the means of forming an opinion as to such rights. And in order to sustain an in-

junction for the protection of property *pendente lite* it is not necessary to decide in favor of complainant upon the merits, nor is it necessary that he should present such a case as will certainly entitle him to a decree upon the final hearing, since he may be entitled to an interlocutory injunction, although his right to the relief prayed may ultimately fail."

Examining the statements in defendant's showing of resistance to the motion with reference to plaintiff's alleged engaging in business in Alaska prior to the 6th day of August, 1929, and subsequent thereto up to the 22d day of October, 1929, which are seriously claimed to be admitted by the plaintiff, there is found not a single fact alleged by defendant on the subject that the plaintiff did so engage in business within the meaning of the provisions of our statute heretofore cited prescribing the requirements to be followed by foreign corporations doing business in Alaska. It is said that the plaintiff "engaged as a common carrier in doing an airplane business transporting passengers and freight by air from one point to another" and so on.

This is a mere conclusion and states no fact enabling the Court to say what specific alleged act or acts of the [39] plaintiff justifies the conclusion that the plaintiff at any time was doing business anywhere in the Territory within the meaning of the applicable statutes. What particular act did plaintiff do? Whom did plaintiff transport by air for hire, and when? Where did such alleged transportation take place? What alleged freight was car-

ried, and when and where? What were the terms of such alleged contracts of hiring? Was anything of value paid by anybody for the alleged services and when? Did the plaintiff authorize such transportation?

It is further said that the plaintiff "held itself out to the general public as being a common carrier in the business of transporting passengers and freight by air from point to point in Alaska," and the Court asks similar questions with reference to this conclusion of law.

It is further said that the plaintiff "did in fact as a common carrier transport passengers and freight for hire." Did the plaintiff transport the passengers and freight by airplanes or otherwise?

It is further said that the plaintiff "did in fact do a general transportation business by airplanes within the Territory of Alaska, between the 1st and 6th days of August, 1929, and at all times thereafter." What did the plaintiff do? What acts did plaintiff commit in violation of the provisions of existing law?

Leaving this phase of defendant's showing, it is further alleged, in substance and effect, that the plaintiff not only entered into the contract sued upon but also other contracts with the following companies: Bennett-Rodebaugh Airplane Company and Anchorage Air Transport Incorporated. It is alleged that such contracts with these companies and [40] their stockholders were

" * * * to the same effect and purpose as that entered into with Wien Alaska Air-

ways Incorporated which is set forth in plaintiff's complaint * * * with the exception of the necessary change of names and the dates."

Who is it who assumes to say that these other contracts were to the same effect and purpose as the contract involved in this suit? Is the Court to take the statement of an airplane pilot or mechanic or sometimes manager of an airplane corporation, who is also the defendant in this suit, as to the character of these alleged other and undisclosed contracts, as to their purpose and effect, and as to the fact that they are, or either of them is, identical with the contract in this suit?

The Court now will cease discussing contentions so unfounded and extravagant and claims so preposterous and will conclude by saying that if ever again mature and experienced attorneys inveigle this Court into witnessing and deciding a sham battle of this character laid on fictitious lines while the Court is engaged in other more exacting duties, the Court will be compelled to deal summarily with them and each of them.

Motion is granted, but it will be limited to restraining the defendant from entering into competition in any way with the plaintiff in the conduct of its airplane business in the Second, Third and Fourth Judicial Divisions of Alaska, and from entering into any business that will conflict in any way with the plaintiff in the conduct of its airplane business in said Divisions of Alaska, and from becoming interested in any company or co-

partnership engaged in said divisions in the airplane business, and from accepting employment with any airplane [41] company, corporation, or association, except the plaintiff company, as pilot, mechanic or manager in said Divisions of Alaska, and such restraints and injunctions against the defendant shall continue until the final determination of this action, and become operative upon the filing of the statutory undertaking in the sum of Twelve Hundred Dollars (\$1200.00) approved by the Court.

Dated at Fairbanks, Alaska, this 24th day of February, 1930.

CECIL H. CLEGG,
District Judge.

Received a copy of the foregoing bill of exceptions on this 1st day of March, 1930.

JOHN A. CLARK,
CHAS. E. TAYLOR,
Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 3, 1930.

Refiled Mar. 15, 1930. [42]

The following are Plaintiff's Citations:

Chap. 69 Session Laws of Alaska, 1923, amend. Sec. 654 Comp. L. Alaska.

Chap. 32 Alaska Session Laws amend. Sec. 660 Comp. L. Alaska.

Sec. 657, Comp. L. Alaska.

14a C. J. 1273, Sec. 3979.

14a C. J. 1305, Sec. 4008.

14a C. J. 540, Sec. 2460.

- 14a C. J. 1276, Sec. 3982 and n.
14a C. J. 1279, Sec. 3986 and n.
14a C. J. 1280, Sec. 3989 and n.
14a C. J. 1276, Sec. 3982.
14a C. J. 1324, Sec. 4031 and n.
32 Fed. (2d), 519.
14a C. J. 1324, Sec. 4031.
87 Pac. 1143.
83 Pac. 734.
1 Alaska 598.
22 Fed. 694.
81 Fed. 44.
41 So. 678.
180 S. W. 811.
101 S. W. 702.
83 At. 807.
41 Fed. 678.
44 So. 591.
264 Pac. 206.
13 C. J. 467, Sec. 410, 411.
46 L. R. A. 122.
43 Pac. 667.
35 L. R. A. (N. S.) 396 and Notes.
7 R. C. L. 571, Sec. 559.
37 Cal. 543.
Title 15 U. S. C. A., pages 30, 33, 34, 68.
221 U. S. 1, 55 L. Ed. 619.
19 R. C. L. 67.
3 R. C. L. Supp. 913.
2 R. C. L. Supp. 1523.
12 R. C. L. 984.
28 C. J. 743, Sec. 19.

- 140 Fed. 412.
140 Fed. 987, 72 C. C. A. 681.
186 Fed. 63, 108 C. C. A. 165.
227 Pa. 55, 75 At. 988.
200 U. S. 179, 50 L. Ed. 428.
171 U. S. 604, 43 L. Ed. 300.
171 U. S. 578, 43 L. Ed. 290.
12 C. J. 23, Sec. 23.
6 R. C. L. 591.
278 Fed. 167, citing Sec. 6708 Thompson on Corporations.
33 A. L. R. 351-2.
3 L. A. R. 248 (Anno. p. 250).
52 L. A. R. 1344.
52 L. A. R. 1356 (Anno. p. 1362).
9th L. A. R. 1472.
20th L. A. R. 66.
22 L. A. R. 744.
278 Fed. 699.
7 Alaska 375.
99 Pac. 1049.
125 N. E. 67.

The following are Defendant's Citations:

- 14a C. J. 1254 (n. 53-56).
Sec. 660 Comp. L. Alaska as amended by Session
Laws of Alaska, 1923, Chap. 32.
14a C. J. 1294 (n. 82-85) Sec. 4002.
14a C. J. 1302.
14a C. J. 1305, Sec. 4008.
14a C. J. 1307.
3 Alas. 649.

6 Alas. 358.

7 Alas. 375.

99 Pac. 1049.

278 Fed. 699.

13 C. J. 478, Sec. 422 and notes Black's Dictionary,
p. 451.

91 U. S. 275.

34 Cal. 492.

259 U. S. 214.

284 Fed. 401.

73 Pac. 927.

High on Injunctions, I, Sec. 22.

125 N. E. 67.

168 N. W. 393.

154 Fed. 929.

112 N. W. 989.

149 S. W. 461.

13 C. J. 245 (n. 79, 82, 83).

81 So. 44.

44 So. 591.

200 U. S. 179-185, 50 L. Ed. 428-433.

U. S. Constitution, Art. 4, Sec. 3 (Comp. Laws
24).

Sherman Act, Secs. 1, 2, 3 U. S. Code 351.

Clayton Act, Secs. 1, 18, 7 U. S. Code 352. [43]

[Title of Court and Cause.]

CERTIFICATE OF JUDGE TO BILL OF EX-
CEPTIONS AND ORDER DIRECTING
REFILING OF SAME.

I, Cecil H. Clegg, Judge of said court, do hereby certify that the above and foregoing bill of exceptions, pages numbered 1 to 20 inclusive, contains all of the evidence seen and heard by the Court upon the hearing of plaintiff's motion for a rule to show cause and said rule to show cause, the Court's memorandum opinion and everything occurring at the said hearing not otherwise of record and that it is truthful and accurate.

IT IS THEREFORE ORDERED that the Clerk refile the said bill of exceptions and that when so refiled the same shall be and become a part of the record in this case.

Dated at Fairbanks, Alaska, this 15 day of March, 1930.

CECIL H. CLEGG,
District Judge.

Entered in Court Journal No. 17, page 713.

[Endorsed]: Filed Mar. 15, 1930. [44]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To Rob't W. Taylor, Clerk of Said Court:

You will please prepare a transcript of the

papers and record in the above-entitled cause, authenticate the same in the usual manner and forward by mail to the Clerk of the U. S. C. C. of Appeals at San Francisco, California, for use by said court on the appeal herein, such transcript to contain copies of the following papers and records, to wit:

1. Plaintiff's complaint and exhibit thereto.
2. The motion for an order allowing a temporary injunction.
3. Rule to show cause with marshal's return thereon.
4. Bill of exceptions complete including certificate and order at end.
5. All journal entries including the temporary injunction.
- 5½. Plaintiff's injunction bond (\$1200.00).
6. Praecipe for transcript.
7. All papers on the appeal (except that the citation, order enlarging time to file transcript in Court of Appeals and stipulations as to printing record, [45] are original papers and are to be forwarded to C. C. A. and not made a part of the transcript proper).

HARRY E. PRATT,

LOUIS K. PRATT,

Attorneys for Defendant and Appellant.

Service of the foregoing praecipe for transcript of record by receipt of a copy thereof is hereby admitted this 15th day of March, 1930.

JNO. A. CLARK,
CHAS. E. TAYLOR,
Attorneys for Plaintiff and Appellee.

[Endorsed]: Filed Mar. 15, 1930. [46]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Comes now Ralph Wien, defendant below and appellant, and complains that the judgment and order of the Court granting a temporary injunction against him, entered in the above-entitled cause on the 25th day of February, 1930, is erroneous, contrary to law and unjust to him and files with his petition for an allowance of an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, the following assignments of error, upon which he will rely upon said appeal for a reversal, to wit:

I.

The Court erred in making and entering the temporary injunction in this cause of date February 25, 1930, for the following reasons, to wit:

(a) The complaint and affidavits of Charles L. Thompson and Ralph Wien before the Court on the hearing for said temporary injunction, the same constituting the entire evidence in the matter, es-

tablished without dispute that the plaintiff, a foreign corporation, was doing business [47] in the Territory of Alaska prior to and at the time of and at all times after the making of the contract which forms the basis of plaintiff's suit and which was set forth in its complaint as Exhibit "A," and that said contract was made in Alaska with residents of Alaska at a time when said plaintiff had not complied with the laws of Alaska relative to foreign corporations doing business therein in that said corporation filed its articles of incorporation, its financial statement and its designation of an agent upon whom service of process might be made in the office of the Clerk of the District Court for the Division wherein it intended to carry on business, to wit, the Fourth Judicial Division, Territory of Alaska, on the 12th day of September, 1929, and not before, and it filed said articles of incorporation, financial statement, designation of agent and paid its corporation tax and other fees required by law in the office of the auditor of the Territory of Alaska upon the 22d day of October, 1929, and not before, and that therefore the contract of August 6, 1929 (Exhibit "A" in plaintiff's complaint), forming the basis of plaintiff's suit was void and could not be enforced in favor of the corporation under the laws of Alaska, to wit: Sections 654, 655 and 660 Compiled Laws of Alaska, as amended by Chapter 69, Session Laws of Alaska, 1923; Chapter 32, Session Laws of Alaska, 1923, and Section 6, subdivision 7, Chapter 118, Session Laws of Alaska, 1929.

(b) The affidavits of Charles L. Thompson and Ralph Wien and the plaintiff's complaint in this cause showed that the contract marked Exhibit "A" in plaintiff's complaint and forming the basis of this suit was invalid as creating a monopoly of commerce in freight and passengers in the air by means of airplanes in the Second, Third and Fourth [48] Divisions of the Territory of Alaska and invalid as in restraint of trade, and as also indirectly accomplishing the purchase by plaintiff of the stock of corporations then engaged in the same line of business, all in violation of Section 3 of the Sherman Act (U. S. Code, p. 351) and Sections 1 and 7 of the Clayton Act (U. S. Code, pp. 352 and 353).

HARRY E. PRATT,
LOUIS K. PRATT,
Attorneys for Defendant.

Service of the foregoing assignments of error by receipt of a copy thereof is hereby admitted this 15th day of March, 1930.

JNO. A. CLARK,
CHAS. E. TAYLOR,
Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 15, 1930. [49]

[Title of Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable CECIL H. CLEGG, Judge of
Said Court:

The above-named defendant Ralph Wien feeling himself aggrieved by the judgment and order made and entered in the aforesaid cause on the 25th day of February, 1930, wherein the plaintiff was allowed and granted a temporary injunction against him, does hereby pray for the allowance of an appeal from the said judgment and order to the Circuit Court of Appeals for the Ninth Circuit on the grounds specified in his assignment of errors which is filed herewith, that citation be issued as provided by law directing that said appeal be heard at San Francisco, California, fixing the amount of the appeal bond, and ordering that a transcript of the record, proceedings and papers upon which said judgment and order was based, duly authenticated, be sent to the United States Circuit Court of Appeals, city of San Francisco, California. [50]

Dated at Fairbanks, Alaska, this 15th day of March, 1930.

HARRY E. PRATT,
LOUIS K. PRATT,
Attorneys for Defendant.

Service of the foregoing petition is hereby admitted this 15 day of March, 1930.

JOHN A. CLARK,
CHAS. E. TAYLOR,
Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 15, 1930. [51]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL, FIXING
PLACE OF HEARING AND AMOUNT OF
APPEAL BOND.

Now, upon this 15th day of March, 1930, this cause came on to be heard upon the petition for an appeal by Ralph Wien, defendant and appellant, and fixing the place of hearing and the amount of the appeal bond, and the Court being fully advised in the premises:

IT IS THEREFORE ORDERED that said appeal be and the same is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, the hearing to be had in said city.

IT IS FURTHER ORDERED that a certified transcript of the record, proceedings, orders, judgment and matters upon which said judgment and order appealed from is based by transferred, duly authenticated, to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, and that the appeal bond of the defend-

ant and appellant upon said appeal be fixed at the sum of \$250.00 to cover all costs if the appellant fails to make good his plea.

IT IS FURTHER ORDERED that upon said defendant and [52] appellant, Ralph Wien, filing in this cause the aforesaid bond duly approved by this Court, this order shall become effective.

Dated at Fairbanks, Alaska, this 15th day of March, 1930.

CECIL H. CLEGG,
District Judge.

Service of the foregoing order by receipt of a copy thereof is hereby admitted this 15th day of March, 1930.

JNO. A. CLARK,
CHAS. E. TAYLOR,

Attorneys for Plaintiff Below and Appellee.
Entered in Court Journal No. 17, page 714.

[Endorsed]: Filed Mar. 15, 1930. [53]

[Title of Court and Cause.]

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, Ralph Wien, as principal, and Percy Hubbard and Wm. B. Root, as sureties, are held and firmly bound unto the above-named plaintiff, Alaskan Airways, Inc., a corporation, in the sum of Two Hundred and Fifty Dollars (\$250.00), to be

paid the said plaintiff or its successors in interest, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 15th day of March, 1930.

WHEREAS the above-named defendant has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, to reverse the judgment of the above-entitled court in the above-entitled cause rendered on the 25th day of February, 1930, granting a temporary injunction pending final trial of said cause,—

NOW, THEREFORE, the condition of this obligation is such that if the above-named defendant shall prosecute [54] said appeal to effect and pay all costs if he fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

RALPH WIEN,
Principal.

PERCY HUBBARD,
Surety.

WM. B. ROOT,
Surety.

United States of America,
Territory of Alaska,—ss.

Percy Hubbard and Wm. B. Root, being first duly sworn, each for himself and not one for the other, on oath says: I am a resident of Fairbanks Re-

ording District, Territory of Alaska, and am the surety on the foregoing bond; I am worth the sum of five hundred dollars (\$500.00) in property situate within the Territory of Alaska over and above my just debts and liabilities and property exempt from execution.

PERCY HUBBARD,

WM. B. ROOT.

Subscribed and sworn to before me this 15th day of March, 1930.

“ [Seal]

HARRY E. PRATT,

Notary Public in and for the Territory of Alaska.

My commission expires Aug. 9, 1930.

The foregoing bond approved by me this 15th day of March, 1930.

CECIL H. CLEGG,

District Judge. [55]

Received copy of foregoing bond this 15 day of March, 1930.

JNO. A. CLARK,

CHAS. E. TAYLOR,

Attys. for Pltf.

[Endorsed]: Filed Mar. 15, 1930. [56]

CITATION ON APPEAL.

United States of America,
Territory of Alaska,
Fourth Judicial Division,—ss.

The President of the United States to Alaskan Airways, Inc., and John A. Clark and Charles E. Taylor, Its Attorneys, GREETING:

YOU ARE HEREBY CITED to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the city of San Francisco, State of California, within thirty days from the date of this citation pursuant to an order allowing an appeal entered and made in that certain case in the District Court for the Territory of Alaska, Fourth Judicial Division, No. 3274, wherein Alaskan Airways, Inc., was the plaintiff and Ralph Wien was the defendant, to show cause, if any there be, why the judgment and order rendered in said cause on February 25, 1930, in favor of said plaintiff granting it a temporary injunction against said defendant should not be corrected, set aside and reversed, and why speedy justice should not be done to the said defendant and appellant in that behalf.

WITNESS the Honorable CHARLES EVANS HUGHES, Chief Justice of the Supreme Court of the United States, this 15th day of March, 1930, and

of the Independence of the United States the one hundred and fifty-fourth.

CECIL H. CLEGG,
District Judge.

[Seal] Attest: ROBT. W. TAYLOR,
Clerk of the District Court.

Entered in Court Journal No. 17, page 714.

Service of the foregoing citation, by receipt of a copy thereof, is hereby admitted this 15 day of March, 1930.

JNO. A. CLARK,
CHAS. E. TAYLOR,
Attorneys for Plaintiff and Appellee.

Filed Mar. 15, 1930. [57]

[Title of Court and Cause.]

ORDER ENLARGING TIME TO AND INCLUDING MAY 15, 1930, TO DOCKET CAUSE.

Upon the motion of the attorneys for the said appellant, it appearing to the Court that by reason of the great distance between Fairbanks, Alaska, and San Francisco, California, the uncertainty of mail service between these points and the time required to perfect a record in the above-entitled cause, it is necessary to extend the time for docketing the appeal in said cause,—

IT IS THEREFORE ORDERED that the time within which the said record in this cause shall be deposited and the appeal docketed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, be and the same is hereby extended and enlarged up to and including the 15th day of May, 1930.

Dated at Fairbanks, Alaska, March 15th, 1930.

CECIL H. CLEGG,

District Judge, Fourth Division, Territory of
Alaska.

Service of the foregoing order by receipt of a copy thereof is hereby admitted this 15 day of March, 1930.

JNO. A. CLARK,

CHAS. E. TAYLOR,

Attorneys for Plaintiff and Appellee.

Entered in Court Journal No. 17, page 714.

Filed Mar. 15, 1930. [59]

[Title of Court and Cause.]

STIPULATION RE PRINTING RECORD.

IT IS HEREBY STIPULATED that in printing the record to be used in hearing the appeal taken in the above-entitled cause that the title of the court and cause shall be printed on the first page of the record and that thereafter the same may be omitted and in place thereof the words "Title of

Court and Cause'' be inserted; also that all endorsements on all papers may be omitted except the Clerk's filing marks, and the admission of service thereof.

Dated at Fairbanks, Alaska, this 15 day of March, 1930.

HARRY E. PRATT,
LOUIS K. PRATT,
Attorneys for Appellant.
JNO. A. CLARK,
CHAS. E. TAYLOR,
Attorneys for Appellee.

Filed Mar. 15, 1930. [60]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Territory of Alaska,
Fourth Division,—ss.

I, Robt. W. Taylor, Clerk of the District Court, Territory of Alaska, Fourth Division, do hereby certify that the foregoing, consisting of 60 pages, constitutes a full, true and correct transcript of the record on Appeal in Cause No. 3274, entitled Alaskan Airways, Inc., a Corporation, Plaintiff, vs. Ralph Wien, Defendant, and was made pursuant to and in accordance with the praecipe of the defendant filed in this action, and by virtue of the said appeal and citation issued in said cause, and

is the return thereof in accordance therewith, and I certify that the citation, order enlarging time to docket cause and stipulation *re* printing record annexed hereto are the originals thereof.

And I do further certify that the index thereof, consisting of page number i, is a correct index of said transcript of record, and that a list of attorneys, as shown on page number ii, is a correct list of the attorneys of record; also that the cost of preparing said transcript and this certificate, amounting to \$25.50, has been paid to me by counsel for appellant in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 19th day of March, 1930.

[Seal]

ROBT. W. TAYLOR,

Clerk of the District Court, Territory of Alaska,
Fourth Division. [61]

[Endorsed]: No. 6116. United States Circuit Court of Appeals for the Ninth Circuit. Ralph Wien, Appellant, vs. Alaska Airways, Inc., a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Territory of Alaska, Fourth Division.

Filed April 1, 1930.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

